

1 forthwith on the hearing on their basic qualifications.  
2 That's our position.

3 JUDGE SIPPEL: Basic qualifications is different --  
4 oh, I see what you're saying. You think it's all one -- it's  
5 all -- well, it's not. They are distinguishable, but that's  
6 neither here nor there.

7 The Commission -- I'm reading this from some  
8 portion of the decision on Second Thursday.

9 MR. STENGER: The footnote that was relied upon --  
10 and I'm sorry. The paragraph that was relied upon, where the  
11 Commission remarked about how far down the road we are on  
12 Issue (g), that was a paragraph that had to do with the  
13 railroad -- the spectrum that's being sold to the railroad --  
14 and that has nothing to do with the stations that are at issue  
15 here.

16 These stations that are at issue here are in the  
17 Mid-Atlantic and North Atlantic Region and they're in the  
18 Pacific Northwest. The spectrum that's being sold to the  
19 railroad is in Southern California and so, the remarks that  
20 the Commission made in the paragraph that was being referred  
21 to, that has nothing to do with the spectrum that's at issue  
22 in this case.

23 And in any event, the Commission ordered that the  
24 matter proceed and so, I couldn't see -- think of a clearer  
25 order that Your Honor would lift the stay and proceed with the

1 hearing on their basic qualifications.

2 MS. KANE: Your Honor.

3 JUDGE SIPPEL: Well, yes, go ahead.

4 MS. KANE: First of all, I'm not sure that Mr.  
5 Stenger is correct about that paragraph and the Commission's  
6 understanding of where Issue (g) fell into the mix. But, if  
7 I could, sir, clarify where the Bureau stands on this issue.

8 We agree that if, in fact, Maritime is not  
9 qualified to hold its licenses, it is not qualified to hold  
10 the licenses that would be at issue in the Issue (g) hearing  
11 which is scheduled for December.

12 The parties have all recognized that going forward  
13 and proceeding with Issue (g) that it might be that we have  
14 gone through all of this, you know, years of discovery and  
15 effort and motions practice on licenses that may end up not  
16 being held by Maritime if Your Honor determines that they are  
17 not qualified to hold licenses.

18 Unfortunately, because of the timing, we obviously  
19 went forward with Issue (g). We're all prepared to go forward  
20 with Issue (g) and at this point, we don't agree with Mr.  
21 Stenger that the HDO requires Your Honor to have a hearing  
22 first on qualifications and then only if you determine that  
23 they are qualified to hold a license to then have a hearing  
24 on Issue (g).

25 The HDO plainly sets out all of these issues as

1 being subject to this hearing and Issue (g) is something that  
2 Maritime is entitled to a hearing on.

3 That being said, in terms of efficiencies, yes, it  
4 might be more efficient to proceed with a hearing on the  
5 qualification issues. Because should Your Honor find that  
6 they are not qualified to hold a license, it would be moot to  
7 have a hearing on Issue (g).

8 So, we are in the process that we are in now  
9 because of all of the motions practiced over the last several  
10 years and the Second Thursday pleading that we ended up in a  
11 situation where we're almost in an inefficient aspect to  
12 having been ready and prepared to go forward on Issue (g)  
13 which is not case determinative.

14 That being said, if Your Honor wants to proceed  
15 immediately with discovery on Issue (g) and proceed to a  
16 hearing on Issue (g), the Bureau is willing and able to  
17 proceed that way.

18 JUDGE SIPPEL: Well, as I understand, there really  
19 is no need for further discovery on Issue (g).

20 MS. KANE: I'm sorry. Not on Issue (g). I'm  
21 sorry. On all of the other issues.

22 JUDGE SIPPEL: Oh. Okay.

23 MR. STENGER: May I make one comment on that?

24 JUDGE SIPPEL: Sure, Mr. Stenger. Sure.

25 MR. STENGER: I agree with what was just said, but



1 I want to point out one thing. That -- one additional fact.  
2 Because Ms. Kane was saying that the hearing on the basic  
3 qualification issues is the primary hearing and that if it's  
4 determined that they're unqualified, that trumps the Issue  
5 (g).

6 I'd like to just point out one wrinkle to that.  
7 Which is that if Your Honor lifts the stay and proceeds with  
8 the hearing on basic qualifications, we may not get to a  
9 hearing. We may have a motion for summary decision that  
10 Maritime is not qualified and that may dispose of the entire  
11 matter without any hearing at all.

12 It hasn't been established. We haven't gotten far  
13 enough into the other issues to determine whether there are  
14 substantial material questions of fact that require a hearing  
15 or whether it's already clear and indisputable based on the  
16 facts that we already know that the licensee is not qualified  
17 and so, there's a possibility that if Your Honor lifts the  
18 stay that not only could we possibly go to a hearing on these  
19 other issues, but we could also have a motion for summary  
20 decision.

21 Your Honor has entertained several motions for  
22 summary decision from Maritime and the Bureau on Issue (g).  
23 I would hope that Your Honor would entertain one motion for  
24 summary decision from my side on their basic qualifications.  
25 Because I believe I can demonstrate very clearly that they're

1 not qualified to hold any licenses and that will dispose of  
2 this entire case.

3 JUDGE SIPPEL: I'll note what you said. Yes, sir.

4 MR. PLACHE: Yes. I'm Matt with Pinnacle Wireless.

5 JUDGE SIPPEL: Yes, Matt from Pinnacle.

6 MR. PLACHE: So, Pinnacle Wireless is leasing  
7 WRV374 in the State of New Jersey and has constructed a very  
8 robust system for the state, for two state agencies protecting  
9 hundreds of millions of people.

10 JUDGE SIPPEL: You up and down the Jersey Turnpike?

11 MR. PLACHE: Up and down the turnpike and at the  
12 Meadowlands.

13 JUDGE SIPPEL: I was thinking of that when I  
14 traveled up to New England this summer.

15 MR. PLACHE: I think about it every time I do as  
16 well.

17 JUDGE SIPPEL: Go ahead, sir.

18 MR. PLACHE: So, we're looking at a situation where  
19 we ought to address Issue (g). Pinnacle Wireless has to  
20 participate and let's say WRV374 survives Issue (g). Then  
21 we're going to have another trial on the qualification issue.

22 It's almost like double jeopardy for Pinnacle  
23 Wireless although that concept doesn't necessarily apply.

24 We'd rather see both done at once, but we do not  
25 agree with the notion that if Maritime is not qualified to

1 hold WRV374 that the license just evaporates. Because it is  
2 constructed and it is being used by Pinnacle Wireless and  
3 Pinnacle Wireless is a legitimate lessee of that license.

4 So, the lessees have to be protected somehow even  
5 if Maritime isn't qualified.

6 JUDGE SIPPEL: Well, the judgment doesn't say that  
7 the license just disappears. I mean it only says that the  
8 person holding the license can't benefit from a sale of them  
9 if he -- if he's got character problems.

10 MR. PLACHE: Pinnacle Wireless paid up front to  
11 lease the licenses.

12 JUDGE SIPPEL: Well, there's no allegations of  
13 character against Pinnacle.

14 MR. PLACHE: Absolutely not.

15 JUDGE SIPPEL: But, that's -- again, that becomes,  
16 you know, what I call an administrative matter after the fact.  
17 My job here is to just hold a hearing on qualifications and  
18 this Issue (g) and make a determination on those and then the  
19 rest of it goes wherever it goes. So, it's -- yes. Yes, Mr.  
20 Kirk.

21 MR. KIRK: The stay was originally put into place  
22 because the parties were seeking Second Thursday relief and  
23 it would have been inefficient to move forward with a hearing  
24 on character qualifications if Second Thursday relief was  
25 granted consistent with ROs to protect innocent creditors.



1 That's why Choctaw's here. We want to get the creditors paid  
2 as quickly as possible.

3 To me, it would be inequitable to lift the stay  
4 based on an order focused on one set of incorrect facts and  
5 we've demonstrated that we're going to file a petition of  
6 reconsideration showing that the basis for that decision, the  
7 factual basis, is, in fact, incorrect and if we're able to do  
8 that, we'll be back in a situation of you're moving forward  
9 with a hearing on character. We now have to pay and expend  
10 resources that otherwise could go to innocent creditors in a  
11 hearing all in the potential to be back before the Commission  
12 on the Second Thursday showing which they haven't fully  
13 evaluated yet.

14 JUDGE SIPPEL: Mr. Richards.

15 MR. RICHARDS: Yes, thank you, Your Honor.

16 Our clients, the oil and gas companies and the  
17 electric utilities, are still trying to figure out the  
18 Commission's order that was released on September 11th and I  
19 note some of the pressing uses of this spectrum by other  
20 companies involved in this proceeding. Our clients have  
21 extremely pressing needs. Monitoring the leaks of lethal gas,  
22 for instances, in populated areas. Things like that.

23 They are very frustrated to put it mildly with the  
24 FCC's decision. I think some of them may seek  
25 reconsideration. Some of them may drop out because as Ms.

1 Kane recognized the proceeding's been pending for three and  
2 a half years. Some of these applications were filed years  
3 before the hearing designation order.

4 But, considering that we don't know at this point  
5 how many of our clients will even be continuing in this  
6 proceeding, we would urge you not to proceed with Issue (g)  
7 discovery until the status of the parties is clarified.

8 JUDGE SIPPEL: Let me ask you. You mean a  
9 litigation issue. Issue (g) has already been discovered.

10 MR. RICHARDS: That's right.

11 JUDGE SIPPEL: I thought we finished. But, you  
12 mean going to a hearing on it?

13 MR. RICHARDS: Yes, with discovery and the hearing  
14 on that issue. On the non-Issue(g) portion of the case. I  
15 misspoke.

16 JUDGE SIPPEL: Right. The character. Well, the  
17 character.

18 MR. RICHARDS: Yes.

19 JUDGE SIPPEL: But, you don't have any problem with  
20 going on Issue (g)?

21 MR. RICHARDS: No problem.

22 MR. STENGER: Your Honor, again, this goes far  
23 beyond the -- first of all, none of this has been briefed by  
24 anybody. If Mr. Kirk wants to submit a motion, that's great.

25 But --



1 MR. KIRK: The stay's in place. There's nothing  
2 to brief.

3 MS. KANE: The stay's been lifted according to the  
4 --

5 MR. STENGER: Your Honor, if I may finish my one  
6 sentence.

7 JUDGE SIPPEL: Wait. Wait. Too many people going  
8 at one time.

9 MR. STENGER: This goes far beyond --

10 JUDGE SIPPEL: No more briefing.

11 MR. STENGER: -- what I anticipated we would be  
12 discussing in a simple status conference.

13 JUDGE SIPPEL: You know, you never know what to  
14 expect, Mr. Stenger.

15 MR. STENGER: Well, that's right.

16 JUDGE SIPPEL: I didn't expect all this either.

17 MR. STENGER: That's right.

18 JUDGE SIPPEL: But, boy, it sure is interesting.

19 MR. STENGER: Well, let me make -- let me try to  
20 make it more interesting, Your Honor.

21 The position that I'm hearing is that they're going  
22 to seek reconsideration of the Commission's denial of Second  
23 Thursday on the grounds that Mr. DePriest is not judgment  
24 proof. That's what I'm hearing this morning. That that was  
25 all a mistake and oh, that he is judgment proof. Excuse me.

1           However, we just heard the railroad say that there  
2 was a self-executing decision where the railroad can pay  
3 millions of dollars to Maritime for licenses that are going  
4 to go to the railroad. Is Mr. DePriest going to be receiving  
5 that money? Is he still going to be judgment proof after the  
6 railroad deal goes through?

7           You know, this is all brand new matters that we're  
8 debating here in front of Your Honor on the merits of the  
9 Commission's decision.

10           I'll be interested to read the petition for  
11 reconsideration and obviously, I'll be opposing it. But, I  
12 don't understand how someone can be judgment proof when he's  
13 allowed to sell millions of dollars worth of spectrum to the  
14 railroads.

15           JUDGE SIPPEL: Well, it's -- that really is -- that  
16 is really an immaterial consideration for me.

17           MR. STENGER: But, that's the basis upon which  
18 they're asking you not to lift the stay. That they have good  
19 grounds to appeal this order and I question whether they have  
20 --

21           JUDGE SIPPEL: They're not arguing the grounds to  
22 me. They're going to argue the grounds to the Commission.  
23 The only --

24           MR. STENGER: Well, they're arguing the grounds to  
25 you this morning. They just argued the grounds to you. They

1 said --

2 JUDGE SIPPEL: They pointed out that they have --  
3 that they have what they believe is a meritorious basis for  
4 asking for reconsideration.

5 They're not telling me to decide whether their  
6 arguments are any good. I have enough problems with the ones  
7 I got before me.

8 And I mean I'm going back to this again. I'll hear  
9 anybody out, but this -- I said that before. I said there was  
10 a self-executing order telling the railroad that they're going  
11 to get what they needed so that they can comply with the  
12 statute. Mr. Cole is free to go home. Okay. That was number  
13 1.

14 Number 2 is they also said to rescind this partial  
15 stay of the -- I understand this by the way. The Commission  
16 said the presiding judge is to rescind his partial stay of the  
17 proceeding and to proceed with adjudication of the issues  
18 pertaining to Maritime's basic qualifications.

19 So, there you go, I've been given the dictum by the  
20 people that pay my salary and I don't have any choice.

21 Even if I did have a choice, I like the idea of  
22 doing what the Commission says, but I don't have any choice.

23 Yes, sir.

24 MR. CATALANO: Your Honor, you have a right to  
25 control your own processes.



1 JUDGE SIPPEL: That's true.

2 MR. CATALANO: The Commission has said to lift the  
3 stay. However, how we proceed from here is within --  
4 completely within your control.

5 We're on the ten yard line on Issue (g). The  
6 Bureau has said that we could finish the litigation on Issue  
7 (g) and then move on to the next part of the case. That was  
8 the original plan. That was on track.

9 This order came out at a rather untimely time. It  
10 doesn't mean we should completely disrupt the procedures that  
11 we had in place that were designed for efficiency and as Mr.  
12 Richards has pointed out, as Mr. Kirk has pointed out, there  
13 are going to be reconsiderations. There are going to be  
14 matters going on before the Commission. Possibly the court.  
15 So, that could in the interim change things.

16 So, we would urge you from the point of the  
17 utilities and the oil and gas companies to stay on the  
18 procedural track that we're on right now. It's totally within  
19 your control.

20 JUDGE SIPPEL: Yes, thank you very much for  
21 recognizing that. These are quotes that I like to tell to my  
22 colleagues. I've got this authority.

23 I know that. I know that full well and believe me,  
24 I didn't mean to say that literally I'm going to start action  
25 on the basic qualifications.

1 I'm simply saying the Commission wants the stay  
2 lifted and they want me to go forward. Of course, subject to  
3 my own judgment and the circumstances of the situation. It's  
4 always that.

5 So, I intend to manage the case as best I can to  
6 keep that -- to keep things under control. So, far, the only  
7 thing I'm asked to do is to try a case that was -- that I set  
8 trial dates for in December. That's all.

9 And the issue is -- I hate to say an issue in this  
10 case is simple, but by comparison to character issues, it  
11 seems to be a pretty clean cut issue all across the board.

12 Now, the fact that I'm getting ready to do that  
13 it's got no -- that's got no -- that does not affect any party  
14 from going up and having the Commission stay things.

15 They can tell the Commission look, we're going to  
16 have a lot of stuff before you. You have to give us -- you  
17 have to stay. The judge is down there going crazy. You have  
18 to stay him so we can do this, you know, and maybe you get it.  
19 Maybe you won't. But, I'm not the one to do it.

20 The Commission said this is what you got to do and  
21 I'm going to do what the Commission says within my framework  
22 not within the Commission's. The Commission hasn't even given  
23 me a framework. They're just saying do your job. That's all  
24 they're saying.

25 Now, anything else?

1 MS. KANE: Your Honor, the only thing we would say  
2 is that we believe the order is self-executing and simply  
3 because other parties may seek a petition for reconsideration  
4 which may or may not be successful does not mean that we  
5 should hold up proceeding on the other issues, Issues (a)  
6 through (f) or however we're going to refer to the  
7 qualification issues. At whatever timing Your Honor believes  
8 is most appropriate for the efficiencies of this case.

9 JUDGE SIPPEL: All right. Well, that's -- okay.  
10 That's well said. That's generally my point. I'm saying that  
11 the Commission has said for me to do something. Unless  
12 somebody gets the Commission to stay what it said, then I'm  
13 going to do it.

14 So, I'm going to keep the trial dates in December  
15 and now, we have to start talking about scheduling on the  
16 character issues and let's see where we come out on that so  
17 that I'm absolutely sure that I'm doing the most practical  
18 thing by trying this Issue (g) first.

19 Remember when we set that up for trial, for  
20 hearing, those dates, there was no -- we were getting nothing  
21 from the Second Thursday issue. The Commission hadn't even  
22 hinted about that and then all of a sudden it came out.

23 So, as I say, things happen. What do they say  
24 Secretary Rumsfeld said? Stuff happens.

25 Yes, sir.



1 MR. STENGER: Your Honor, in terms of the --

2 MR. HAVENS: I have one question if you will  
3 permit.

4 JUDGE SIPPEL: Well, Mr. Stenger is just beginning  
5 to talk. Can you wait until he finishes.

6 MR. HAVENS: Yes.

7 JUDGE SIPPEL: Okay.

8 MR. STENGER: Your Honor, in terms of the  
9 efficiency of managing your docket, okay, what's being urged  
10 is that we have a hearing in December at which they put Sandra  
11 DePriest on the witness stand and I'm allowed to ask her did  
12 you continue operations or did you not continue operations?  
13 But, I'm not allowed to ask her did you misrepresent the facts  
14 about continuing operations? Did you lack candor about  
15 continuing operations?

16 Because they'll object to those questions saying  
17 that that goes to the character issues and all I'm allowed to  
18 ask her about is the narrow issue of whether she continued  
19 operating or not.

20 Then we're going to bring her back for a second  
21 hearing sometime later and put the same witnesses on the  
22 witness and then I'm going to be able to ask the witness did  
23 you misrepresent the facts about continuing operations? Did  
24 you lack candor in the filings about continuing operations?

25 That simply doesn't make any sense, Your Honor, for

1 us to have a narrow hearing in December at which I'm not  
2 allowed to ask questions that go to the applicant's basic  
3 qualifications when this is a revocation and show cause  
4 hearing about the applicant's basic qualifications.

5 I don't think that comports with judicial economy  
6 even though I agree that you obviously have the authority to  
7 manage your own docket.

8 I'm urging you to manage your docket in such a way  
9 that we go to hearing on all the issues at one time. When I  
10 put a witness on the witness stand, I can ask the witness all  
11 of the questions that are relevant.

12 And they're certainly going to object to the three  
13 witnesses that I've put in. I've put in Peter Harmer and Fred  
14 Goad and Steve Calbrese as witnesses about the credibility of  
15 Maritime and Choctaw. They're going to certainly on October  
16 28th file a motion to strike all my testimony saying that it  
17 goes to character issues and it doesn't go to the continuation  
18 of operations and why should they be allowed to strike my  
19 witnesses in this hearing in December when my witnesses go to  
20 the main issue that we're supposed to litigating, the  
21 character of the applicant.

22 JUDGE SIPPEL: And that would go to credibility of  
23 the --

24 MR. STENGER: Yes.

25 JUDGE SIPPEL: -- applicant's witnesses, too.

1 MR. STENGER: Well, I would hope so. I would hope  
2 that any motion along those lines would be denied and I would  
3 be allowed to put on my witnesses, but I'm --

4 JUDGE SIPPEL: What I'm trying to point out, Mr.  
5 Stenger, is that credibility is always an issue and if you got  
6 a basis for cross examining or bringing an opposing witness  
7 in to contradict or, you know, we do those things.

8 MR. STENGER: Well, that's very helpful, but I hear  
9 --

10 JUDGE SIPPEL: Since the common law days, we've  
11 been doing those things.

12 MR. STENGER: I appreciate that, Your Honor. I'm  
13 just pointing out that in terms of administrative efficiency,  
14 I don't think that it makes sense to have a constrained  
15 hearing on narrow issues while the most important issue of  
16 basic qualifications is sidelined and further delayed.

17 And the delay wasn't my client's fault. We didn't  
18 choose to file bankruptcy and file Second Thursday and so,  
19 we've been waiting for years to get to the central issue in  
20 the case and we think that now is the time to have that  
21 central issue and delaying for another two or three months,  
22 the Bureau has just said it would be very confusing to proceed  
23 with the character issues and the Issue (g) hearing at the  
24 same time.

25 So, what the Bureau is really saying is they don't



1 really want to move forward on the main issue until sometime  
2 in January after this hearing has been completed. But, even  
3 then, we're going to be filing proposed findings of fact and  
4 conclusions of law and arguing about Issue (g).

5 So, when are we going to get to the central issue  
6 in the case if we don't just put aside the Issue (g) hearing  
7 right now and go right to the central issue?

8 It seems that it will take months and months to  
9 litigate a matter that will be irrelevant if they don't have  
10 their basic qualifications.

11 JUDGE SIPPEL: Well, you're repeating the same  
12 argument you made earlier.

13 MR. STENGER: That's true.

14 JUDGE SIPPEL: And if I'm going to manage the case,  
15 I don't like backseat drivers.

16 It's very simple. It's very simple. The  
17 Commission has said lift your stay and get on with the whole  
18 case. Okay.

19 Let's say we do what you -- hypothetically we do  
20 what you say. Okay. We put on Ms. DePriest for the purposes  
21 of Issue (g).

22 But, since the character issues are not back in the  
23 case, wouldn't you be allowed to cross examine on the whole  
24 mix? Wouldn't you?

25 MR. STENGER: Well, aren't we entitled --

1 JUDGE SIPPEL: Would you ask me if you -- could you  
2 ask for leave if the court would let you do that?

3 MR. STENGER: I would certainly attempt to do that,  
4 Your Honor.

5 JUDGE SIPPEL: Then there you go.

6 MR. STENGER: But, keep in mind that I don't have  
7 discovery on these other issues at this point. I would  
8 certainly do the best I --

9 JUDGE SIPPEL: Is that what it is? That's the  
10 beginning of your discovery.

11 If you could make cause as to why you need further  
12 discovery, you're going to get it.

13 I mean it's nothing here that's rocket science.

14 Let me manage the case my way. I'm not saying it's  
15 going to be the most efficient way, but it's my way and, you  
16 know, in the parlance, it's either my way or the highway.  
17 But, somebody's got to do this and I'm prepared to do it.

18 Now, again, that opens up another aspect of it, but  
19 I certainly -- I think anything that relates to the character  
20 issue that can be raised with a witness on the stand on the  
21 Issue (g) is open game because the Commission has said it's  
22 open game. Unless somebody stays something.

23 If something gets stayed by the Commission and the  
24 Court of Appeals, you know, I'm going to respect that.

25 MR. STENGER: Well, keep in mind, Your Honor, that

1 they've only put in direct testimony on Issue (g). They  
2 haven't put --

3 JUDGE SIPPEL: They didn't know. Wait a minute.  
4 They didn't know and if you've got something to cross examine  
5 on on the basis of a witness, you can't believe this witness  
6 because he's, you know, this, this, this and this, okay.  
7 Establish that. This, this, this and this.

8 But, what I'm going to require being done is I'm  
9 going to require concise trial briefs to be filed before the  
10 trial and if you want to raise this in a trial brief which you  
11 really should do to give advance notice that you're going to  
12 go down these different avenues with these different  
13 witnesses, there's enough notice given to be able to move  
14 forward.

15 And if we then get over to the issue on character,  
16 the character issues, that you feel that once you develop that  
17 cross examination of the witness -- of key witnesses on Issue  
18 (g) that you want further discovery for very narrow purposes,  
19 there's got to be due consideration given to that kind of a  
20 request. Not blunderbuss kind of a thing. Not fishing  
21 expeditions. Specific facts that you want to develop because  
22 witnesses testified to this, this, this and this.

23 Now, to me, that's the way to manage a case.  
24 Because the case is only coming to me the way it was given to  
25 me. That's, you know, I'm stuck with that.



1           Okay. Enough. Enough. Does everybody understand  
2 that? Does anybody agree with that or not agree with that?

3           MS. KANE: I think we would have to see how it  
4 would play out, Your Honor. Because the specific issues in  
5 the HDO that are central to the qualification issues are six  
6 very specific factual scenarios over which we have not been  
7 entitled to seek discovery for the last three years.

8           And throughout this case, Your Honor has  
9 specifically kept qualifications and character separate from  
10 any of our discovery requests and that's the only reason upon  
11 which we proceeded with Issue (g). Is because it was separate  
12 and apart from the qualification issues.

13           Which is why our direct case is designed to just  
14 the issue of permanent discontinuance and operations of the  
15 16 stations and not as to whether or not Mr. or Ms. DePriest  
16 lied to the Commission in their application process for four  
17 other licenses that are not part of Issue (g).

18           JUDGE SIPPEL: No. No. No. No. No. I'm sorry.  
19 I spoke to --

20           MS. KANE: But, we would be hesitant if Mr. Stenger  
21 was allowed to proceed with discovery during the hearing of  
22 those very specific factual scenarios that we have not been  
23 entitled to seek discovery on at the -- until this time.

24           MR. STENGER: The problem is even more serious than  
25 that, Your Honor.

1           The Government has put in -- I don't know if you've  
2 had an opportunity to look at the direct testimony, but the  
3 Bureau has put in as its direct case the testimony of all of  
4 the Maritime and Choctaw witnesses.

5           Sandra DePriest will be testifying as the Bureau's  
6 witness.

7           The Bureau cannot cross examine its own witness and  
8 indeed in the notice that was filed yesterday, they don't  
9 propose to cross examine Sandra DePriest.

10          So, how is the Bureau going to adduce evidence  
11 about Sandra DePriest's basic character qualifications when  
12 they can't ask her a single question at the hearing in  
13 December because they have put her in as their witness.

14          The Government's witnesses are John Reardon, Sandra  
15 DePriest, Patrick Trammel, Tim Smith and various  
16 representatives of the utilities. They've all been put in as  
17 the Government's witnesses.

18          The Government can't cross examine its own witness  
19 and so, Your Honor is expecting me without the help of the  
20 Bureau -- the Bureau is supposed to be the staff counsel for  
21 the Commission that's supposed to be pursuing the revocation  
22 and show cause hearing, but now the Bureau has put itself in  
23 the position where it's going -- when I try to ask Sandra  
24 DePriest a question, Ms. Kane is going to stand up and object  
25 to my questions on the grounds that Sandra DePriest is her

1 witness.

2 I don't know if Your Honor realizes that.

3 MS. KANE: Well, we would object if they were going  
4 to go beyond the scope of what Issue (g)'s hearing was  
5 originally designed to cover that it would be collateral to  
6 the issues at hearing.

7 The qualification issues were never -- were never  
8 supposed to be at issue for Issue (g). The only issue now  
9 that Your Honor has established the construction of the 16  
10 licenses was whether those 16 licenses -- the operations of  
11 those 16 licenses had been permanently discontinued.

12 JUDGE SIPPEL: Okay. Your associate has a matter,  
13 too.

14 MR. ENGEL: Roger that, Your Honor. I think that  
15 we're getting a little far afield here.

16 JUDGE SIPPEL: Yes, we are.

17 MR. ENGEL: We're getting into an evidence  
18 admission session, Your Honor.

19 JUDGE SIPPEL: Yes.

20 MR. ENGEL: When I think the simple question, the  
21 25 meter target for Your Honor is whether we go forward on  
22 Issue (g) on December 9th. Your Honor has clearly ruled on  
23 that and then the second question would be are we going to  
24 schedule -- how are we going to schedule the other issues,  
25 Your Honor. Simply put.



1 Now, if we want to get into whether we can talk  
2 about collateral matters or if they're, in fact, collateral,  
3 that's in Your Honor's schedule that you've already issued.  
4 We'll get to -- we'll cross that bridge when we get there at  
5 the admissions hearing and at the December 9th hearing, Your  
6 Honor.

7 But, I don't -- I think that's premature to have  
8 that discussion today. I think today is simply we're here for  
9 Your Honor's ruling on whether to go forward with December 9th  
10 and what we'll do next.

11 JUDGE SIPPEL: Correct. I mean that's it in a  
12 nutshell.

13 I just want to -- in response to your objection,  
14 Ms. Kane, I didn't mean to be that broad when I said that you  
15 can explore all the character issues.

16 I mean in the context of the Issue (g), if you have  
17 a reason to question a witness' credibility on what he or she  
18 is testifying to, you can go into that.

19 MS. KANE: We would agree with that, Your Honor.

20 JUDGE SIPPEL: Okay. And I'm asking in trial brief  
21 fashion to give -- you know, that you will receive adequate  
22 notice of this that they're going to go into these areas and  
23 then I can limit things at the -- right at the trial. I can  
24 say no, you can't go there, but you can go here.

25 It's all a question of just managing day-by-day

1 evidence and it's good to have the evidence as much as can be  
2 brought out about one witness in one context. It's more  
3 helpful. Certainly it's most helpful to me and it's going to  
4 be helpful to the parties, too. But, if it gets beyond that,  
5 then, you know, we have to cut it off.

6 Now, let's get down to business though. Right now,  
7 what I'm doing is I'm setting this case up to proceed on Issue  
8 (g) as it's set and I ask this question, too. I said do you  
9 think an admission session is going to be necessary or can we  
10 just move this evidence, you know, the document evidence,  
11 pretty well in on the morning of?

12 MS. KANE: Well, Your Honor, that was an issue that  
13 we wanted to raise.

14 Mr. Havens and his companies have provided as part  
15 of their direct case more than 440 exhibits. Several thousand  
16 pages of exhibits. Which they have identified as not being  
17 limited to just Issue (g).

18 So, if, in fact, we are going to go forward with  
19 a hearing on just Issue (g), just on the question of 16  
20 stations permanent discontinuance, we would ask Your Honor to  
21 direct Mr. Havens to identify which of the 440 plus exhibits  
22 are actually directed to that issue either by submitting an  
23 additional direct case or by identifying on his exhibit list  
24 which exhibits are specific to Issue (g).

25 And we would ask the same thing with regard to his